

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:B04

PLR-105003-09

Date: JULY 20, 2009

Legend

Decedent	=
Daughter	=
Accountant	=
Trust 1	=
Trust 2	=
Date 1	=
Date 2	=
Date 3	=
Date 4	=

Dear :

This responds to your letter dated January 19, 2009, requesting an extension of time under § 2642(g) of the Internal Revenue Code and § 301.9100-3 of the Procedure and Administration Regulations to make an allocation of Decedent's generation-skipping transfer (GST) exemption.

The facts and representations submitted are summarized as follows:

On Date 1, Decedent established Trust 1 as an irrevocable trust for the benefit of her descendants. Trust 1 provides, in relevant part, that upon the death of Decedent, the trustee is to set apart, in a separate trust to be known as the "Family Trust 1," the remainder of the Trust 1 estate. Family Trust 1 has GST potential.

On Date 2, Decedent established Trust 2 as a revocable trust. Trust 2 provides, in relevant part, that upon Decedent's death, the trustee is to set apart, in a separate trust to be known as the "Family Trust 2," the remainder of the Trust 2 estate for the

benefit of her descendants. The trustee is to then divide Family Trust 2 into two portions, to be known as the Portion One Trust and the Portion Two Trust. The Portion One Trust is to consist of a fractional portion of the trust estate of Family Trust 2 for which Decedent is the transferor for GST purposes. The Portion One Trust has GST potential.

Decedent died on Date 3. Daughter, in her capacity as executor of Decedent's estate, hired Accountant to prepare the Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return. The estate tax return was timely filed with extensions on Date 4. However, Accountant failed to file Schedule R with the estate tax return. It is represented that Decedent strongly intended for her executor to allocate her available GST exemption first to the Portion One Trust.

You have requested an extension of time under § 2642(g) and § 301.9100-3 to allocate Decedent's GST exemption to the Portion One Trust, effective as of Decedent's date of death and based on the value on Decedent's date of death.

LAW AND ANALYSIS

Section 2601 imposes a tax on every GST. A GST is defined under § 2611(a) as: (1) a taxable distribution; (2) a taxable termination; and (3) a direct skip.

Section 2631(a) provides that for purposes of determining the inclusion ratio, every individual shall be allowed a GST exemption amount which may be allocated by such individual (or his executor) to any property with respect to which such individual is the transferor. Section 2631(b) provides that any allocation under § 2631(a), once made, shall be irrevocable. Section 2631(c) provides that for purposes of § 2631(a), the GST exemption amount for any calendar year shall be equal to the applicable exclusion amount under § 2010(c) for such calendar year.

Section 2642(g)(1)(A) provides that the Secretary shall by regulation prescribe such circumstances and procedures under which extensions of time will be granted to make an allocation of GST exemption described in § 2642(b)(1). Such regulations shall include procedures for requesting comparable relief with respect to transfers made before the date of the enactment of § 2642(g)(1)(A), which was enacted into law on June 7, 2001.

Section 2642(g)(1)(B) provides that in determining whether to grant relief, the Secretary shall take into account all relevant circumstances, including evidence of intent contained in the trust instrument or instrument of transfer and such other factors as the Secretary deems relevant. Section 2642(g)(1)(B) further provides that for purposes of determining whether to grant relief, the time for making the allocation shall be treated as if not expressly prescribed by statute. See Notice 2001-50, 2001-2 C.B. 189.

Section 301.9100-1(c) provides that the Commissioner has discretion to grant a reasonable extension of time under the rules set forth in §§ 301.9100-2 and 301.9100-3 to make a regulatory election, or a statutory election (but no more than 6 months except in the case of a taxpayer who is abroad), under all subtitles of the Internal Revenue Code except subtitles E, G, H, and I.

Section 301.9100-3 provides the standards used to determine whether to grant an extension of time to make an election whose date is prescribed by a regulation (and not expressly provided by statute). Under § 301.9100-1(b), a regulatory election includes an election whose due date is prescribed by a notice published in the Internal Revenue Bulletin. In accordance with § 2642(g)(1)(B) and Notice 2001-50, taxpayers may seek an extension of time to make an allocation described in § 2642(b)(1) under the provisions of § 301.9100-3.

Requests for relief under § 301.9100-3 will be granted when the taxpayer provides the evidence to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interests of the government.

Section 301.9100-3(b)(1)(v) provides that a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer reasonably relied on a qualified tax professional, including a tax professional employed by the taxpayer, and the tax professional failed to make, or advise the taxpayer to make, the election.

Based on the facts submitted and the representations made, we conclude that the requirements of § 301.9100-3 have been satisfied. Therefore, the executor is granted an extension of time of sixty (60) days from the date of this letter to make an allocation of Decedent's available GST exemption to the Portion One Trust. The allocation will be effective as of Decedent's date of death and will be based on the fair market value for federal estate tax purposes on the date of death.

The executor should make the allocation on a supplemental Form 706. The supplemental Form 706 should be filed on behalf of the estate with the Cincinnati Service Center at the following address: Internal Revenue Service Center, Cincinnati, OH 45999. A copy of this letter should be attached to the supplemental Form 706. A copy is enclosed for this purpose.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representatives.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Sincerely,

Curt G. Wilson
Associate Chief Counsel
Passthroughs & Special Industries

Enclosures

Copy for section 6110 purposes
Copy of this letter